

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JOHN GLENN GUTHRIE,

Plaintiff,

V.

**OCWEN LOAN SERVICING, LLC,
REALHOME SERVICES AND
SOLUTIONS, INC., ALTISOURCE,
PREMIUM TITLE SERVICES – TEXAS
TITLE; HUBZU.COM; DOES 1-50,**

Defendants.

CIVIL ACTION NO. 5:21-CV-01291

**REPLY IN SUPPORT OF PHH MORTGAGE CORPORATION'S
MOTION TO DISMISS**

Defendant PHH Mortgage Corporation, successor by merger to Ocwen Loan Servicing, LLC (“Defendant” or “PHH”) files this *Reply in Support of PHH Mortgage Corporation’s Motion to Dismiss* (the “Reply”), and respectfully shows the Court as follows:

I. ARGUMENT AND AUTHORITIES

Plaintiff John Glenn Guthrie (“Plaintiff”) asserts novel allegations in his *Reply to Responses, Request to Quash PHH Mortgage Services Motion to Dismiss, Request for Discovery and Hearing* (Doc. 9) (“Response”) in an effort to avoid the Court’s dismissal of this lawsuit. However, the Court should not consider any allegations not asserted in Plaintiff’s Complaint when determining whether Plaintiff’s claims are sufficient to survive a *Twombly* analysis. *See Lovelace v. Software Spectrum Inc.*, 78 F.3d 1015, 1017 (5th Cir. 1996) (“[I]n deciding a motion to dismiss for failure to state a claim, courts must limit their inquiry to the facts stated in the complaint and the documents either attached to or incorporated in the complaint”); *see also Ray v. Ronnie Moore*

Trucking, No. DR-12-CV-17-AM-VRG, 2012 WL 13032960, *3 n.2 (W.D. Tex. June 26, 2012) (stating that the Court would consider any factual allegations only appearing in Plaintiff's pleading when conducting the 12(b)(6) analysis); *see also FMC Intern. A.G. v. ABB Lummus Glob., Inc.*, No. CIV. A. H-04-3896, 2006 WL 213948, at *6 n.7 (S.D. Tex. Jan. 25, 2006) ("such allegations [sic] which are not contained in Plaintiff's live pleading(s), will not be considered in determining whether Plaintiffs have stated predicate act of wire fraud under Rules 9(b) and 12(b)(6)"). Accordingly, Plaintiff fails to establish he has pleaded, *in his Complaint*, facts sufficient to state a viable claim for relief against Defendant.

Additionally, Plaintiff wholly fails to address or rebut any of Defendant's arguments regarding his pleading deficiencies or assert that his Complaint is sufficient to survive an analysis for dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. *See generally*, Response. Plaintiff additionally fails to establish that amending the Complaint would be sufficient to defeat a 12(b)(6) analysis and, therefore, the Complaint should be dismissed with prejudice. *See generally*, Complaint.

II. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, PHH requests that the Court grant Defendant's *Motion to Dismiss* pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and dismiss with prejudice each and all of Plaintiff's claims against it, with prejudice. Defendant further prays the Court grant all other and further relief, at law or in equity, to which it may be entitled.

Respectfully submitted,

LOCKE LORD LLP

/s/ Shawnika L. Harris

B. David L. Foster

State Bar No. 24031555

dfoster@lockelord.com

600 Congress Ave., Suite 2200

Austin, Texas 78701

(512) 305-4700

(512) 305-4800 (Facsimile)

Robert T. Mowrey

State Bar No. 14607500

rmowrey@lockelord.com

Shawnika L. Harris

State Bar No. 24106058

Shawnika.Harris@lockelord.com

2200 Ross Avenue, Suite 2800

Dallas, Texas 75201-6776

(214) 740-8000

(214) 740-8800 (Facsimile)

ATTORNEYS FOR DEFENDANT

PHH Mortgage Corporation d/b/a PHH

Mortgage Services, successor by merger to

Ocwen Loan Servicing, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of January 2022, a true and correct copy of the foregoing document was served on the following via ECF and/or CMRRR according to the Federal Rules of Civil Procedure:

John Glenn Guthrie
1250 Iowa Street
Ashland, OR 97520
(541) 951-5818
Plaintiff Pro Se

Annalyn G. Smith
SCHMOYER REINHARD LLP
8000 IH 10 West, Suite 1600
San Antonio, Texas 78230
Telephone: (210) 447-8033
Facsimile: (210) 447-8036

***Attorneys for REALHome Services
and Solutions, Inc.
Altisource Solutions, Inc.
Premium Title Services of Texas, Inc.
LLC***

/s/ Shawnika L. Harris

Counsel for Defendant

**PHH Mortgage Corporation d/b/a PHH Mortgage
Services, successor by merger to Ocwen Loan
Servicing, LLC**